

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
OMAHA DIVISION**

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| MANUEL ACOSTA, et al. | : | |
| on behalf of themselves and all other similarly | : | |
| situated individuals, | : | |
| Plaintiffs, | : | Case No. 8:08-cv-00086-JFB-TDT |
| v. | : | |
| TYSON FOODS, INC. | : | CLASS ACTION |
| Defendant. | : | |

PLAINTIFFS' MOTION FOR RULE 23 CLASS CERTIFICATION

Plaintiffs Manuel Acosta, et al., by and through their undersigned counsel, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, hereby submit the following Motion For Class Certification.

The class requested to be certified is defined as follows:

All current and former employees of Defendant Tyson's Madison, Nebraska meat processing facility who have been employed by Tyson at any time from March 1, 2004¹ to the present and who are or were paid under a "gang time" compensation system in the Kill, Cut or Conversion Departments.

Each of Plaintiffs' claims for violation of Nebraska state law, implicate the same underlying facts with regard to Defendant's failure to pay for the workers' for time spent at work donning, doffing and cleaning personal protective equipment and performing other related unpaid activities. As such, each and every element of Fed.R.Civ.P. 23 is

¹ Plaintiffs' Nebraska state law claims have a four-year statute of limitations and thus the class period should extend four years backwards from the date of the filing of the Complaint (which was February 29, 2008). See, Shaw v. McFarland Clinic, P.C., 363 F.3d 744 (8th Cir. 2004).

satisfied to certify a class under either Rule 23(b)(1) or (b)(3). In support of this Motion, Plaintiffs incorporate the accompanying Memorandum of Law.

WHEREFORE, pursuant to Rule 23 and upon consideration of their Motion and Memorandum of Law, the Plaintiffs respectfully request that this Court grant their Motion For Rule 23 Class Certification.

Respectfully submitted,

/s/ Brian P. McCafferty

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Attorneys for Plaintiffs

DATED: June 8, 2010

CERTIFICATE OF SERVICE

I, Brian P. McCafferty, hereby certify that on June 8, 2010, I electronically filed the foregoing Plaintiffs' Motion For Rule 23 Class Certification with the Clerk of Court using the CM/ECF system which sent notification of such to the following counsel for Defendant Tyson:

Michael J. Mueller, Esq.
Evangeline Paschal, Esq.
Alison D. Balus, Esq.
Steven D. Davidson, Esq.

and I hereby certify that I have mailed by United States Postal Service, postage prepaid, this document to the following non CM/ECF participants:

None.

/s/ Brian P. McCafferty

Brian P. McCafferty

Dated: June 8, 2010